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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

NO. 471

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL,
Secretary of the Interior,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY TO THE MEMORANDUM IN OPPOSITION

DUNCAN MILLER
P.O. Box 728, Lake Shore Court
Boulder City, Nevada
Petitioner, Pro se

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Respondent's memorandum is inaccurate in several key propositions related to the legal history of this case. In the first paragraph it states, "These lands had been opened *for* a period of simultaneous filings . . ."

The context of Public Land Order #1621 (Pet. p. 3), discloses that the "lands" were opened *[with]* "a simultaneous filing period," however, the greater percentage of the lease tracts were applied for afterwards, the same as in this case.

Said Public Land Order #1621, in Paragraph 4, states in pertinent part:

> "These notices will describe the land SUBJECT TO NONCOMPETITIVE LEASE and will *PROVIDE* for a simultaneous filing period of offers to lease."

Paragraph 1 of the Order states, with reference to the modification of Land Order #82:

> ". . . to permit . . . issuance of mineral leases pursuant to the Mineral Leasing Act . . ."

The foregoing has been followed since substantially all the *area opened* to Mineral Leasing has had *leases issued* except the tracts that the Bureau of Land Management determined that leases should be issued to petitioner.

On page 2, the phrase, "top-filer" is used in a misleading connotation, since it has always been the mode in such leasing activities. This Court in *Bosche v. Udall*, 373 U.S. 472 (1965), held that such a "top-filing" applicant was entitled to a lease, over a prior unqualified applicant; subsequently, pursuant thereto, the unqualified applicant's lease was cancelled in favor of the so-called "top-filing" qualified applicant.

In the third paragraph on page 2, the contention is made that petitioner seeks *only* review of the second judgment of the Court of Appeals, but this is one of the questions presented. However, the memorandum fails to cite any relevant authorities or even discuss the question.

In the final paragraph on page 2, respondent with reluctance barely touches the overriding primary question of "due process," merely saying "it is believed," but no showing that petitioner was actually accorded "due process" is made! The petition on page 8, points to the circumstances and recites the facts to the contrary which includes the fact that the Summary Judgment was invalid, because of lack of "due process." Respondent does not deny that there was no date set for a hearing in the District Court as prescribed by the Federal Rules of Civil

Procedure, as well as the local rules of the District Court. Further, on pages 8, 9 and 10 of the petition, a 1966 appellate case on all fours with the due process position of petitioner is cited without any rebuttal in the memorandum. The very words of the respondent as a petitioner before this Court in *Best v. Humble Placer*, 337 U.S. 334, wherein there was full acknowledgment that public land administrative proceedings were subject to the "administrative procedure act," are quoted also without rebuttal.

In *Pan-Atlantic St. Corp. v. Atlantic Coast L. R. Co.*, 353 U.S. 436, this Court said in the last paragraph:

> "We think such a reading of the law would mutilate the administrative system which Congress created by the two Acts. Where the remedy for an evil is clear, the remedial provisions of the Administrative Procedure Act should be given full effect. SEE: Wong Yang Sung v. McGrath, 339 U.S. 33, 41, 70 S. Ct. 445, 450, 94 L. Ed. 616."

The principles of due process stratified by this Court in *Morgan v. United States*, 304 U.S. 1, and in *Shields v. Utah-Idaho Central R. Co.*, 305 U.S. 177, which control this case, are ignored by the opposition Memorandum.

Petitioner had valid statutory rights to the leases as determined by the Bureau of Land Management (Pet. p. 3), and then one sad day he opens his Mail Box in which there is an envelope enclosing "a decision," peremptorily striping him of these statutory rights. Surely in such a case where there was both administratively and in the District Court, such an unreasonable violation of petitioner's constitutional rights, the motion to set aside the judgment in the District Court, was a logically legal procedure. The Complaint was mistakenly denominated, one for judicial review, while in truth plaintiff was seeking a *declaratory judgment*, on the *legality* of the *Administrative Decision*. In the light of the failure to permit administratively the right to be heard, there could be no judicial review because there was no administrative record. Pursuant to the "Administrative Procedure Act," the District Court

would have no jurisdiction to review an administrative decision in violation of the "Act" in this respect.

Further, there seems to be a limbo as to the reasoning or intent of the *administrative decision* involved in the case under review, as discussed on page 5 of the petition. No reason is even suggested why petitioner's statutory rights should, as to the leases, be denied and the leases opened for new[1] applicants, some of whom were not even interested or qualified in 1958, when the statutory rights to the leases were acquired as established by the Bureau of Land Management, such proposed procedure is as illogical as it would be for petitioner to ask return of the depleted large sums of money invested with respondent (Pet. pp. 5 & 6), or just as logical as to re-offer for simultaneous filings the leases involved in the *Tallman* case, 380 U.S. 1. Moreover, respondent does not explain what would happen to the other leases involved in the land opening, under the Public Land Order.

Respondent does not deny that the Bureau of Land Management's decision, was a *legal* administrative decision, *is the only legal administrative decision,*[2] there is no denial that *never* has the department *overruled* such a decision, establishing lease statutory rights, as the first qualified applicant, unless it was for the benefit of an adverse applicant or entity, as fully set forth in the petition pages 6 & 7. Furthermore, there is no denial of the fact that *none* of the land *decisions* of the *Department* have ever been rendered against such an applicant for oil and gas leases, with established statutory rights without opportunity to be heard in opposition. For 46 years, since the enactment of the Mineral Leasing Act, of 1920, the foregoing is true.

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[1] Also old applicants who had bagged their limit in lease applications in the original opening — this would result in a violation of Sec. 27 of the Mineral Leasing Act.

[2] With respect to petitioner's case.

For the reasons stated in the petition and supplemental herein, petitioner should be granted appropriate relief.

Respectfully submitted,

Duncan Miller

Petitioner, Pro se